

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ANDERS TRON-HAUKEBO,

CASE NO. C23-5691JLR

11 Plaintiff,

ORDER

12 v.

13 WASHINGTON STATE
14 DEPARTMENT OF
15 TRANSPORTATION, et al.,

Defendants.

16 **I. INTRODUCTION**

17 Before the court are two motions: (1) Defendants the Washington State
18 Department of Transportation (“DOT”) and Washington State Ferries’ (“WSF”, and
19 together, “Defendants”) motion to dismiss and (2) Plaintiff Anders Tron-Haukebo’s
20 motion requesting a ruling. (MTD (Dkt. # 12); MRR (Dkt. # 13).) Defendants oppose
21 Mr. Tron-Haukebo’s motion requesting a ruling. (MRR Resp. (Dkt. # 14).) Mr.
22 Tron-Haukebo, who is proceeding *pro se* and *in forma pauperis* (“IFP”), did not respond

to Defendants' motion to dismiss. (*See generally* Dkt.) Neither party filed a reply. (*See generally id.*) The court has reviewed the motions, the parties' submissions, the relevant portions of the record, and the governing law. Being fully advised,¹ the court GRANTS Defendants' motion to dismiss and DENIES Mr. Tron-Haukebo's motion requesting a ruling.

II. BACKGROUND

This case arises from Mr. Tron-Haukebo’s efforts to obtain employment with WSF. (*See generally* Compl. (Dkt. # 6).) Mr. Tron-Haukebo lives in Clallam County, Washington; is 77 years old; and has a hearing disability. (*Id.* at 1, 4-5.) He alleges that he applied for a position as a WSF terminal attendant and was offered employment beginning on March 28, 2023. (*Id.* at 2.) WSF terminal attendants may be given one of two assignments: ticket seller or traffic guide. (*Id.* at 3-4 (describing the two roles).) Mr. Tron-Haukebo asserts that he “diligently applied himself to learning and practicing the training activities for becoming a ticket[[seller.” (*Id.* at 5.)

Mr. Tron-Haukebo attended orientation and training sessions provided by WSF in Seattle. (*Id.* at 2.) On his first day of classes, Mr. Tron-Haukebo asked to be seated in the first row of seats because he has a hearing disability. (*Id.* at 4.) He also asked for materials that he could take home to study, but his request was denied. (*Id.* at 5.) Mr. Tron-Haukebo asserts that he attended all his classroom training sessions in Seattle, “was

¹ No party requests oral argument (*see* MTD at 1; MRR at 1; MRR Resp. at 1) and the court concludes that oral argument would not be helpful to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 never told that classes were delayed because of his tardiness,” and never received any
2 notice of complaints or reprimands. (*Id.* at 4.)

3 On or around April 3, 2023, Mr. Tron-Haukebo was told that he did not get a
4 passing score on the classroom portion of the ticket-seller training and that his
5 employment was terminated for that reason. (*See id.* at 2, 5.) His request to be
6 reassigned to traffic guide duties was denied. (*Id.* at 5.) When he asked if he could be
7 scheduled for the next classroom training session, he was told that he must re-apply for
8 employment before he could attend the training again. (*Id.* at 5.)

9 Mr. Tron-Haukebo filed his proposed complaint and an application to proceed IFP
10 on July 31, 2023. (IFP App. (Dkt. # 1).) On August 16, 2023, the court granted Mr.
11 Tron-Haukebo leave to proceed IFP and docketed his complaint. (IFP Order (Dkt. # 5);
12 Compl.) Mr. Tron-Haukebo alleges that Defendants violated the Americans with
13 Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, by failing to accommodate his
14 hearing disability. (Compl. at 5.) The court also liberally construes his complaint as
15 raising a claim for violation of the Age Discrimination in Employment Act (“ADEA”),
16 29 U.S.C. § 621 *et seq.* (*See id.* (alleging that “older learners often require adaptive
17 measures to learn material,” that Defendants “should have adjusted the manner and mode
18 of [Mr. Tron-Haukebo’s] training” due to his “learning style,” and that he “is a member
19 of a protected class” “due to his age”)); *McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th
20 Cir. 1992) (noting that the court must liberally construe a *pro se* litigant’s pleadings)).
21 Mr. Tron-Haukebo seeks back pay, reinstatement, exemplary damages, and compensation
22 for lost benefits. (Compl. at 5.)

III. ANALYSIS

The court begins by discussing Defendants' motion to dismiss, then considers Mr. Tron-Haukebo's motion requesting a ruling.

A. Motion to Dismiss

Defendants urge the court to dismiss this case because Mr. Tron-Haukebo's claims are barred by Eleventh Amendment immunity. (*See generally* MTD.) They argue that Washington has not consented to be sued for violations of the ADA and ADEA and that Congress has not abrogated the states' sovereign immunity for such violations. The court agrees.

The Eleventh Amendment bars a citizen from bringing a suit against their own state in federal court. *Micomonaco v. Washington*, 45 F.3d 316, 319 (9th Cir. 1995) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)). “Eleventh Amendment immunity extends to state departments, agencies, boards, and commissions, and to state employees acting in their official capacity because a suit against them is regarded as a suit against the State itself.” *Planned Parenthood Ariz., Inc. v. Brnovich*, 172 F. Supp. 3d 1075, 1086 (D. Ariz. 2016) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989)). Accordingly, Defendants—which are Washington state agencies—are arms of the state ordinarily immune from suit in federal court.

A plaintiff can overcome the Eleventh Amendment bar only if the state has consented to waive its immunity or if Congress has abrogated the state's immunity. *See Micomonaco*, 45 F.3d at 319. Washington has not consented to waive its Eleventh Amendment immunity to claims brought in federal court. *See Rains v. State*, 674 P.2d

1 165, 170 (Wash. 1983) (“[T]he State cannot be sued in federal court because of the
 2 Eleventh Amendment.”); *see also Minnis v. Washington*, 675 F. App’x 728, 730 (9th Cir.
 3 2017) (affirming grant of summary judgment on ADA claims against state of Washington
 4 based on Eleventh Amendment immunity); *Del Castillo v. Wash. Dep’t of Soc. & Health*
 5 *Servs.*, No. C05-1122JLR, 2007 WL 2713035, at *4 (W.D. Wash. Sept. 14, 2007)
 6 (concluding that Washington has not waived Eleventh Amendment immunity for ADEA
 7 claims). And the Supreme Court has made clear that neither Title I of the ADA, which
 8 governs employment, nor the ADEA abrogates Eleventh Amendment immunity for
 9 claims against a state. *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 360-61
 10 (2001) (holding that Title I does not abrogate suits for money damages against the states);
 11 *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 66 (2000) (holding that the ADEA does not
 12 validly abrogate the states’ Eleventh Amendment immunity).

13 Thus, because Defendants are immune from suit, the court GRANTS their motion
 14 to dismiss and DISMISSES Mr. Tron-Haukebo’s claims without prejudice. *See Freeman*
 15 *v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (holding that dismissals
 16 under the Eleventh Amendment should be without prejudice so that the plaintiff “may
 17 reassert his claims in a competent court”); *see also Kimel*, 528 U.S. at 91 (“State
 18 employees are protected by state age discrimination statutes, and may recover money
 19 damages from their state employers, in almost every State of the Union.”). The court
 20 denies leave to amend because no amendment can overcome Defendants’ Eleventh
 21 Amendment immunity. *See Lucas v. Cal. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir.
 22 1995) (holding that when a court dismisses a *pro se* plaintiff’s complaint, it must give the

1 plaintiff leave to amend “[u]nless it is absolutely clear that no amendment can cure the
2 defect” in the complaint).

3 **B. Motion Requesting a Ruling**

4 In his motion, Mr. Tron-Haukebo states that he “recently read information that
5 ‘permission’ from the [Equal Employment Opportunity Commission (“EEOC”)] is
6 necessary prior to filing a lawsuit alleging violation of the ADA” and that he has since
7 attempted to contact the EEOC, to no avail. (MRR at 1.) He asks the court, therefore,
8 either to (1) allow this lawsuit to proceed because he has made a “good-faith effort to
9 comply” with his “administrative legal duties,” or (2) grant him leave to “file a new
10 action regarding nearly identical information and allegations against the Defendants and
11 consider all requirements to obtain EEOC permission” waived or fulfilled. (*Id.* at 2.) As
12 Defendants correctly point out, however, even if there were a legal basis for the court to
13 waive the administrative prerequisites for filing suit, that relief would be futile because
14 the Eleventh Amendment nevertheless bars Mr. Tron-Haukebo from suing them for ADA
15 Title I and ADEA violations in federal court. (*See* MRR Resp. at 2-4.) Therefore, the
16 court DENIES Mr. Tron-Haukebo’s motion requesting a ruling.

17 //

18 //

19 //

20 //

21 //

22 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court GRANTS Defendants' motion to dismiss
3 (Dkt. # 12) and DENIES Mr. Tron-Haukebo's motion requesting a ruling (Dkt. # 13).
4 This matter is DISMISSED without prejudice.

5 Dated this 1st day of November, 2023.

6 
7

8 JAMES L. ROBART
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22